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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

CAMRON ARMONI BARNER,

Defendant and Appellant.

F077031

(Super. Ct. No. CRM028767)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Merced County. Ronald W. Hansen, Judge. (Retired judge of the Merced County Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.)

Julia J. Spikes, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Daniel B. Bernstein and Tia M. Coronado, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Poochigian, Acting P.J., Franson, J. and Snauffer, J.

## **INTRODUCTION**

Appellant Camron Armoni Barner was found unfit to be tried in juvenile court. Proposition 57 was passed after Barner's juvenile fitness hearing. Before his trial commenced, Barner sought unsuccessfully to have the juvenile court conduct a transfer hearing pursuant to Proposition 57. He contends his convictions and sentence should be conditionally reversed and his case remanded to the juvenile court for a transfer hearing in accordance with Proposition 57. We agree.

## **FACTUAL AND PROCEDURAL SUMMARY**

On July 16, 2013, a juvenile petition pursuant to Welfare and Institutions Code<sup>1</sup> section 602 was filed against Barner alleging that he committed first degree burglary, a forcible act of sexual penetration, and a lewd act upon a minor. A juvenile fitness hearing pursuant to former section 707 was conducted on August 2, 2013, at which time Barner was 17 years of age. Barner was found unfit to be tried in juvenile court.

The Merced County District Attorney filed an information on May 2, 2016, charging Barner with four sexual offenses, specifically: sexual penetration by force, sexual penetration by a foreign object of a child under 14 years of age, forcible lewd conduct on a child, and lewd conduct on a child under 14 years of age; residential burglary; and resisting a peace officer. Barner pled not guilty to all charges.

Prior to trial but after the passage of Proposition 57, Barner moved on two separate occasions to have the case sent to the juvenile court for a transfer hearing pursuant to Proposition 57. Both motions were denied.

On January 17, 2018, Barner withdrew his not guilty pleas and pled no contest to residential burglary (Pen. Code § 459) and an added count of misdemeanor sexual battery

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<sup>1</sup> References to code sections are to the Welfare and Institutions Code, unless otherwise specified.

(Pen. Code, § 243.4, subd. (a)). The remaining counts were dismissed with a *Harvey* waiver.<sup>2</sup>

The trial court sentenced Barner to a term of four years for the burglary conviction and a consecutive one-year term for the misdemeanor sexual battery conviction. Barner was awarded credit for time served and released from custody. He was ordered to register pursuant to Penal Code section 290.

Barner filed a timely notice of appeal on February 15, 2018, challenging the denial of his motion for a transfer hearing pursuant to Proposition 57. The trial court granted a certificate of probable cause.

### **DISCUSSION**

Barner contends his convictions and sentence should be conditionally reversed and his case remanded to the juvenile court for a transfer hearing in accordance with Proposition 57. The People concede the issue. We agree.

“ ‘Historically, a child could be tried in [adult] criminal court only after a judicial determination, before jeopardy attached, that he or she was unfit to be dealt with under juvenile court law.... The general rule used to be that “any individual less than 18 years of age who violates the criminal law comes within the jurisdiction of the juvenile court, which may adjudge such an individual a ward of the court.” ’ ” (*People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 305 (*Lara*).) Then, beginning in 1999, changes were made to this historical rule and “prosecutors were permitted, and sometimes required, to file charges against a juvenile directly in criminal court, where the juvenile would be treated as an adult.” (*Ibid.*)

On November 8, 2016, voters enacted Proposition 57, and it went into effect the next day. Proposition 57 “largely returned California to the historical rule. ‘Among other provisions, Proposition 57 amended the Welfare and Institutions Code so as to

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<sup>2</sup> *People v. Harvey* (1979) 25 Cal.3d 754.

eliminate direct filing by prosecutors. Certain categories of minors ... can still be tried in criminal court, but only after a juvenile court judge conducts a transfer hearing to consider various factors such as the minor's maturity, degree of criminal sophistication, prior delinquent history, and whether the minor can be rehabilitated. (Welf. & Inst. Code, § 707, subd. (a)(1).)' ” (*Lara, supra*, 4 Cal.5th at pp. 305-306.) In *Lara*, the Supreme Court concluded the transfer provisions of Proposition 57 apply retroactively to all juveniles charged directly in adult court whose judgments were not final at the time Proposition 57 was enacted. (*Lara*, at pp. 308-309.)

“[T]here are key differences between a Proposition 57 transfer hearing and the analogous fitness hearing under prior law. Most notably, Proposition 57 shifts the burden of proof in the hearing. Under prior law, the juvenile court was bound by a rebuttable presumption that the defendant was not fit for the juvenile court system, whereas under current law there is no such presumption. [Citation.] In addition, the court at [defendant's] fitness hearing could not retain jurisdiction unless it found him fit for juvenile court under all five criteria. [Citation.] In a transfer hearing under current law, the court must consider all five factors, but has broad discretion in how to weigh them.” (*People v. Garcia* (2018) 30 Cal.App.5th 316, 324-325; accord, *J.N. v. Superior Court* (2018) 23 Cal.App.5th 706, 711.)

Proposition 57 applies to Barner's case because it applies retroactively to all juveniles whose judgments were not final at the time of passage. (*Lara, supra*, 4 Cal.5th at pp. 308-309.) Consequently, Barner's motion in the trial court seeking to have his case sent to the juvenile court for a transfer hearing pursuant to Proposition 57 should have been granted. (See *People v. Hargis* (2019) 33 Cal.App.5th 199, 207.)

Here, the parties agree, as do we, that Barner's judgment should be conditionally reversed and his case remanded to juvenile court for a transfer hearing in accordance with Proposition 57 and *Lara, supra*, 4 Cal.5th 299.<sup>3</sup>

### **DISPOSITION**

The conviction and sentence are conditionally reversed, and the matter is remanded to the juvenile court with directions to conduct a juvenile transfer hearing. When conducting this hearing, the juvenile court shall, to the extent possible, treat the matter as though the prosecutor had originally filed a petition in juvenile court and then moved to transfer Barner's case to adult criminal court under the applicable laws as amended by Proposition 57.

If, after conducting the juvenile transfer hearing, the juvenile court finds it would not have transferred Barner to adult criminal court, it shall treat Barner's conviction as a juvenile adjudication and impose an appropriate disposition within its discretion.

If, after conducting the juvenile transfer hearing, the juvenile court determines it would have transferred Barner to adult criminal court because he is not a fit and proper subject to be dealt with in juvenile court, then Barner's conviction is reinstated.

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<sup>3</sup> Barner is not entitled to a jurisdictional hearing, or the equivalent of a second trial, in juvenile court, however. (*Lara, supra*, 4 Cal.5th at pp. 309-310.) The fact that Barner is no longer a juvenile does not preclude a conditional reversal. (See *People v. Hargis, supra*, 33 Cal.App.5th at p. 208, fn. 4.)